

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**[Docket No. 2004D-0163]**

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Certifier D. Harkin

**Guidance for Industry and Food and Drug Administration Staff; Class II  
Special Controls Guidance Document: Immunomagnetic Circulating Cancer  
Cell Selection and Enumeration System; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

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**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the guidance document entitled "Class II Special Controls Guidance Document: Immunomagnetic Circulating Cancer Cell Selection and Enumeration System." This guidance document describes a means by which the immunomagnetic circulating cancer cell selection and enumeration system may comply with the requirement of special controls for class II devices.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify the immunomagnetic circulating cancer cell selection and enumeration system into class II (special controls). This guidance document is immediately in effect as the special control for the immunomagnetic circulating cancer cell selection and enumeration system but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

**DATES:** Submit written or electronic comments on this guidance at any time.

**ADDRESSES:** Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Class II Special Controls Guidance Document: Immunomagnetic Circulating Cancer Cell Selection and Enumeration System"

to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-443-8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Nina Chace, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-1293, ext. 138.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying the immunomagnetic circulating cancer cell selection and enumeration system into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for the device. Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of

the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

## **II. Significance of Guidance**

This guidance is being issued consistent with FDA's GGP's (§ 10.115). The guidance represents the agency's current thinking on the immunomagnetic circulating cancer cell selection and enumeration system. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

## **III. Electronic Access**

To receive "Class II Special Controls Guidance Document: Immunomagnetic Circulating Cancer Cell Selection and Enumeration System" by fax machine, call FDA's Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1531) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

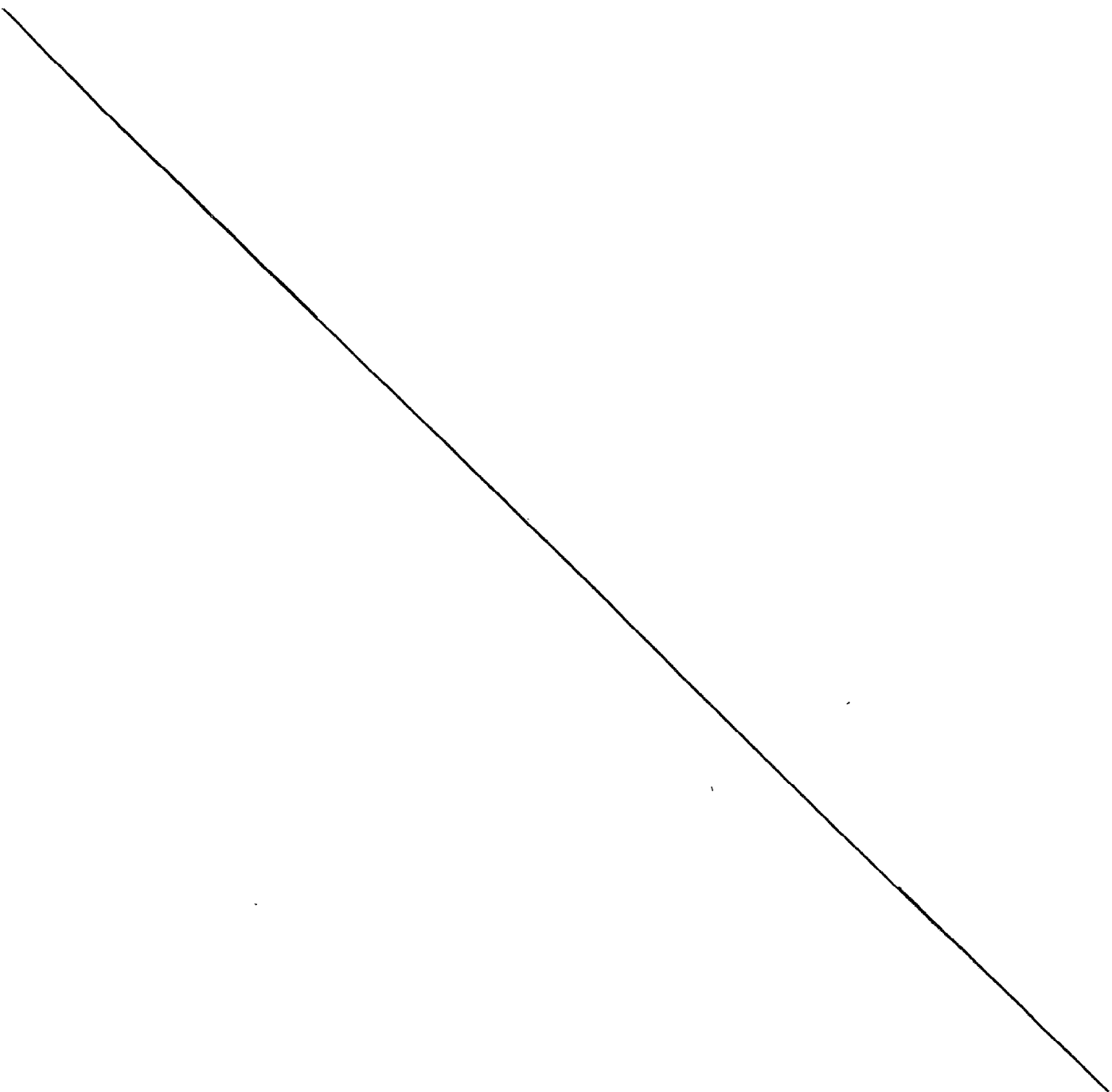
Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of cleared submissions, approved applications, and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at <http://www.fda.gov/cdrh>. A search capability for all CDRH guidance documents is available at <http://www.fda.gov/cdrh/guidance.html>. Guidance documents are also available on the Division of Dockets Management Internet site at <http://www.fda.gov/ohrms/dockets>.

#### **IV. Paperwork Reduction Act of 1995**

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

## V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments to *<http://www.fda.gov/dockets/ecomments>*. Submit two paper copies of any mailed comments, except that individuals may submit paper copy. Comments are to be identified with the



docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: 4/26/04  
April 26, 2004.

Linda S. Kahan

Linda S. Kahan,  
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